

Appln. No. 09/785,700
Amdt. dated Feb. 26, 2004
Reply to Office Action of Nov. 26, 2003
Docket No. 6169-156

IBM Docket No. BOC9-2003-0017

REMARKS/ARGUMENTS

These remarks are made in response to the final Office Action of November 26, 2003 (Office Action). As this response is timely filed within the three-month shortened statutory period for reply, no fee is believed due.

In paragraphs 1 and 2 of the Office Action, claims 1-24 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,611,811 to Deaton *et al.* (Deaton). Applicants have amended claims 1-2, 4-7, 10, 16-17, and 19-22. Support for these amendments can be found throughout the Applicants' specification and, more particularly, at page 13, lines 5-9, page 18, lines 13-16, and page 9, lines 8-9. Accordingly, no new matter has been added.

Prior to addressing the rejections on the art, a brief review of the Applicants' invention is appropriate. The Applicants have invented a method, system, and apparatus for providing promotional material to consumers. In one embodiment of the invention, a computer communications session can be established between a merchant computer system and a third-party, remote shopping stimulation system. The third-party, remote shopping stimulation system can read consumer purchase information from the merchant computer system. The consumer purchase information can include consumer identifying information and product information.

Based on the consumer purchase information, one or more consumers in need of one or more products can be identified. In the third-party remote shopping stimulation system, the promotional material corresponding to the product(s) can be associated with the identified consumers. Accordingly, the promotional material can be made available to the identified consumers using a promotional material delivery system.

Turning to the rejections on the art, it is asserted that Deaton teaches each limitation recited in claims 1 and 16. As amended, claims 1 and 16, however, specify that the merchant computer system interacts with a shopping stimulation system that is a third-party system. Claims 1 and 16 further state that the shopping stimulation system is remote from the merchant system. Accordingly, the third-party, remote shopping stimulation system reads consumer purchase information from the merchant computer system, identifies consumers in need of products, and associates promotional material with identified consumers.

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In contrast, Deaton teaches that a consumer can log into a store Website, such as an online shopping site for a merchant. At column 127, lines 12-15, Deaton states that "In operation, customer personal computer 322 may be used to log on to a web site associated with a store." Thus, Deaton does not teach a third-party system that can be used by a merchant system. Rather, Deaton teaches that a merchant system, such as a merchant web site, performs the incentivizing disclosed therein.

Regarding claims 2 and 17, it is asserted that Deaton teaches that the step of identifying consumers in need of products includes "determining a product consumption rate from said consumer purchase information to identify said one or more consumers in need of one or more products." Claims 2 and 17 have been amended, however, to include the additional step of "offering said one or more consumers equivalent, but different products".

Column 70, lines 4-25 disclose only that customers can be incentivized to purchase related products, i.e. coffee filters if the consumer buys coffee. Column 90 discloses that customers can be incentivized based upon the timing of historical purchases. Column 100, line 30 – column 101, line 12 discloses that a consumer's consumption rate can be tracked and used as a basis for incentivizing the customer. Finally, column 118, lines 52-65 also disclose that consumption rate can be used to incentivize customers.

Significantly, none of the portions of Deaton cited against claims 2 and 17 teach or suggest that consumption rate can be used to determine consumer need, and that alternative, but equivalent products can be offered to the customer. For example, the present invention would facilitate the offering of a different brand of coffee to the customer of the same quality or kind that the user typically buys.

Claims 3 and 18 recite that the step of reading consumer information is undertaken responsive to a merchant request. Column 70, lines 26-46 disclose that the system can determine how price conscious a consumer is, but offers no teaching or suggestion that such determinations are responsive to merchant requests. The Applicants' invention, as noted, can be implemented as a third-party system that is remote from a merchant system and, as such, can be initiated by a merchant request.

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Regarding claims 4 and 19, it is asserted that Deaton teaches that the step of reading purchase information is responsive to detecting a business necessity in an inventory management system. Applicants have amended claims 4 and 19 to indicate that the process, as recited in claim 1 and 16 respectively, is performed responsive to detecting a necessity in an inventory management system. While column 70, lines 26-46, state that "between 30,000 and 60,000 items may be stocked at any point in time", as noted above, the cited passage includes no teaching or suggestion that an inventory management system event is detected, which initiates the process recited in claim 1.

Claims 5 and 20 have been amended to state that the consumer purchase information is read from a purchase history database and that the database includes purchase history information for a plurality of different merchants. Column 70, lines 4-25 make no mention of a database. In any event, the amendment emphasizes the notion that the present invention can be implemented as a third-party system that is remote from a merchant system. As such, the Applicants' invention can provide the services described in the pending claims for a plurality of different merchants.

In contrast, Deaton discloses a system that is to be incorporated within a merchant system. Accordingly, Deaton does not store purchase history information for different merchants, but rather for a single merchant.

Claims 6 and 21 have been amended to state that products can include services. Column 70, lines 4-25 of the Deaton specification, however, include only references to goods and do not teach or suggest that the system can be applied to services.

Regarding claims 7 and 22, it is asserted that Deaton teaches that product information can include product expiration information. Claims 7 and 22 further have been amended to indicate that the determination as to whether a consumer is in need of a product is based upon the product expiration information.

The cited passages, particularly column 70, lines 4-25, column 90, and column 118, lines 52-65, do not teach or suggest that product information can include product expiration information. Instead, the cited passages teach that a consumer's consumption rate can be determined. This allows the Deaton system to determine the time period typically required for a

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consumer to consume a given product. Deaton teaches that when that time period expires, that is the time the system has determined that the user requires to "use-up" a product that was purchased, the consumer can be incentivized.

Product expiration information, as described on page 11, line 16 – page 12, line 6 of the Applicants' specification, states as follows:

Product expiration information can correspond to a product's estimated useful life. This information can relate to the length of time ordinarily associated with a product to fail or otherwise become obsolete. For example, food can have an expiration date. Accordingly, product expiration information can correspond to a product's "sell by date" or some period of time after the "sell by date". Product expiration information also can correspond to the life cycle of a product, which typically does not wear out, but rather becomes obsolete or otherwise undesirable. Examples of such products can include fashion related products and computer software. For example, though trendy clothing may not wear out, a consumer of such clothing may not wish to wear last season's fashions. Accordingly, the product expiration information for high fashion garments can indicate a useful life of several months. In the case of software, product expiration information can indicate a useful life of several months to several years.

As is apparent from the above excerpt of the Applicants' specification, product expiration information pertains to the useful life of a product. Deaton's reference to "expiration" pertains to the period of time a consumer requires to fully consume a product based upon a consumption rate determined by past purchases of the product.

Claim 10 has been amended to state that the "shopping stimulation logic unit is disposed in a third-party computer system that is remote from a merchant and consumer computer system" and that the promotional information database includes "promotional information for a plurality of different merchants." Accordingly, claim 10 now emphasizes the notion that the system is not included as part of a merchant system as is the case with the system disclosed by Deaton.

As Deaton does not teach or suggest each limitation recited in the Applicants' claims, withdrawal of the 35 U.S.C. § 102(e) rejection with respect to claims 1-24 is respectfully requested.

The Applicant believes that this application is now in full condition for allowance, which action is respectfully requested. The Applicant requests that the Examiner call the undersigned if

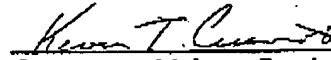
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clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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